

STATE OF INDIANA FILED IN IN THE LAKE COUNTY SUPERIOR COURT
CLERK'S OFFICE
COUNTY OF LAKE) CAUSE NO. 45D100603PL00046
'06 MAR 27 PM 3 50

STATE OF INDIANA, THOMAS R. PHILPOT
CLERK LAKE SUPERIOR COURT
Plaintiff,)
)
v.)
)
DONALD SHEAKS,)
individually and d/b/a)
SHEAKS ROOFING,)
Defendant.)

**COMPLAINT FOR INJUNCTION, RESTITUTION,
COSTS, AND CIVIL PENALTIES**

Plaintiff, State of Indiana, by Attorney General Stephen Carter and Deputy Attorney General Eric Jackson, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, for injunctive relief, consumer restitution, costs, civil penalties, and other relief.

PARTIES

1. Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. Defendant, Donald Sheaks, is an individual engaged in business as a home improvement contractor under the assumed business name Sheaks Roofing, who at all relevant times maintained a principal place of business at 2916 East 4th Place, Highland, Indiana 46322.

CERTIFIED MAIL
POST MARKED MAR 22 2006

FACTS

3. On or about October 30, 1999, Defendant entered into an Assurance of Voluntary Compliance with the Indiana Office of Attorney General, agreeing to comply with the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, in future transactions with Indiana consumers. A true and correct copy of the Assurance of Voluntary Compliance is attached and incorporated by reference as Exhibit "A."

4. On August 29, 2004, Defendant entered into a home improvement contract with Carol Kaniewski of Highland, Indiana wherein Defendant agreed to replace the roof of her home for a price of Three Thousand Two Hundred Eighty Dollars (\$3,280.00). A true and correct copy of Defendant's contract with Kaniewski is attached and incorporated by reference as Exhibit "B".

5. The Defendant failed to include the following information in his contract with Kaniewski:

- a. Defendant's address;
- b. Any time limitations on the consumer's acceptance of the home improvement contract;
- c. A reasonably detailed description of the proposed home improvements;
- d. A statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- e. The approximate starting and completion dates of the home improvement;
- f. Signature lines for the Defendant and Kaniewski with a legible printed or typed version of that person's name placed directly after or below the signature.

6. The contract was not signed or dated by Kaniewski.
7. On or about August 31, 2004 Kaniewski paid the Defendant a deposit of One Thousand Dollars (\$1,000.00), at which time the Defendant represented that the roof would be completed within two (2) weeks.
8. On or about September 11, 2004, Kaniewski paid the Defendant an additional Four Hundred Dollars (\$400.00).
9. On or about October 25, 2004 the Defendant delivered some shingles to Kaniewski's home. However, the Defendant never started and therefore never completed the work on Kaniewski's home.
10. Pursuant to Ind. Code §24-5-11-9, Defendant's contract with Kaniewski was subject to Defendant obtaining the necessary license and permit prior to any work commencing.
11. Defendant obtained neither a contractor's license nor construction permit as required by the City of Highland prior to soliciting or engaging in the work at Kaniewski's residence.
12. Kaniewski hired another home improvement contractor to replace her roof and he used the shingles that were delivered by the Defendant. The contractor calculated that the shingles had a value of Five Hundred Twenty-Two Dollars and Fifty-Four Cents (\$522.54) and credited this amount to the price he charged Kaniewski.

COUNT I-VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

13. The services described in paragraph 4 are "home improvements" as defined by Ind. Code § 24-5-11-3.

14. The transaction referred to in paragraph 4 is a “home improvement contract” as defined by Ind. Code § 24-5-11-4.

15. Defendant is a "supplier" as defined by Ind. Code § 24-5-11-6.

16. By failing to provide a completed home improvement contract containing the information referred to in paragraph 5 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

17. By failing to have Kaniewski sign and date the contract, as referred in paragraph 6 above, the Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-12.

COUNT II – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

18. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 17 above.

19. The transaction referred to in paragraph 4 is a “consumer transaction” as defined by Ind. Code § 24-5-0.5-2(a)(1).

20. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

21. The violations of the Home Improvement Contracts Act referred to in paragraphs 16 and 17 above constitute deceptive acts in accordance with Ind. Code § 24-5-11-14.

22. By representing that the work would be completed within a stated period of time but then failing to complete the work, as referred to in paragraphs 7 and 9 above, Defendant violated the Act by representing that he could complete the home improvements within a stated period of time, when he knew or should have known he could not, in violation of Ind. Code §24-5-0.5-3(a)(10).

23. By failing to obtain the necessary licenses and permits prior to commencing the work, as referred to in paragraph 11 above, the Defendant violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-10(a)(1)(C).

**COUNT III – KNOWING VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

24. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

25. Defendant committed the misrepresentations and deceptive acts set forth in paragraphs 4 through 12 with knowledge and intent to deceive.

RELIEF

WHEREFORE, Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract which includes at a minimum the following:

- 1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- 2) The name and address of the home improvement supplier and the telephone number and name of any agent to whom consumer problems and inquiries can be directed;
- 3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- 4) A reasonably detailed description of the proposed home

improvements;

- 5) If the description required by Ind. Code § 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- 6) The approximate starting and completion dates of the home improvements;
- 7) A statement of any contingencies that would materially change the approximate completion date;
- 8) The home improvement contract price; and
- 9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legibly printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

c. soliciting to engage in a consumer transaction without first obtaining the necessary license and/or permit as required by law;

d. in the course of entering into home improvement transactions, failing to obtain the necessary license or permit as required by law prior to commencing any home improvement work; and

e. representing that the Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendant knows or should reasonably know that he cannot.

AND WHEREFORE, Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief:

a. cancellation of the Defendant's contract with Kaniewski pursuant to Ind. Code § 24-5-0.5-4(d);

b. consumer restitution on behalf of Kaniewski pursuant to Ind. Code § 24-5-0.5-4(c)(2) in the amount of Eight Hundred Seventy-Seven Dollars and Forty-Six Cents (\$877.46).

c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

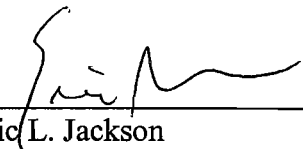
e. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

STEPHEN CARTER
Attorney General of Indiana

By:


Eric L. Jackson
Deputy Attorney General
Atty. No. 19415-49

Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3987

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE CIRCUIT COURT

AVC NO. 00AVC022

IN RE: DONALD SHEAKS, individually)
and doing business as)
SHEAKS ROOFING,)
)
Respondent.)

MISCELLANEOUS DOCKET

NO. 45 C 010003

Filed in Open Court

MAR 31 2000

ASSURANCE OF VOLUNTARY COMPLIANCE

James M. Antone
CLERK LAKE CIRCUIT COURT

The State of Indiana, by Attorney General Jeffrey A. Modisett and Deputy Attorney General Roy P. Coffey, and Respondent, Donald Sheaks, individually and doing business as Sheaks Roofing, enter into this Assurance of Voluntary Compliance (Assurance), pursuant to Indiana Code §24-5-0.5-7.

It is acknowledged that violation of this Assurance constitutes prima facie evidence of a deceptive act as defined by Ind. Code §24-5-0.5-3. This Assurance is entered into without any adjudication of any issue of fact or law herein, and upon consent of the parties hereto.

It is hereby agreed that:

1. Respondent, has a principal mailing address in Lake County at 6743 Leland Avenue, Hammond, Indiana 46323. At all relevant times Respondent has engaged in consumer transactions with Indiana consumers.
2. The terms of this Assurance apply to and are binding upon Respondent, his employees, agents, representatives and assigns.
3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code §4-6-9-4 and Ind. Code §24-5-0.5-1 et seq.



4. Respondent agrees, pursuant to Ind. Code §24-5-11-10, in every home improvement transaction to provide a completed home improvement contract to the consumer before it is signed by the consumer. Respondent agrees that the contract must contain at a minimum the following:

- (a) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (b) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (c) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (d) A reasonably detailed description of the proposed home improvements;
- (e) If the description required by Indiana Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (f) The approximate starting and completion date of the home improvements;
- (g) A statement of any contingencies that would materially change the approximate completion date;
- (h) The home improvement contract price; and
- (i) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

5. Respondent agrees, pursuant to Ind. Code §24-5-11-11, that before the consumer signs the home improvement contract and before the consumer can be required to make a down



payment, the home improvement supplier must have agreed unequivocally by written signature to all of the terms of the home improvement contract.

6. Respondent agrees, pursuant to Ind. Code §24-5-11-12, that Respondent shall give a fully executed copy of the home improvement contract to the consumer immediately after the consumer signs it. The contract must also show the dates the supplier and each consumer executed the contract.

7. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Home Improvement Contracts Act, Ind. Code §24-5-11-1 et seq.

8. Respondent agrees to refrain from conducting any home improvements until he has first obtained all necessary licenses and building permits required by law.

9. Respondent, in soliciting and/or contracting with consumers, agrees to fully comply with the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 et seq.

10. Respondent agrees to reimburse the Consumer Protection Division of the Office of the Attorney General for its reasonable costs of investigating this matter in the amount of Five Hundred Dollars (\$500.00) payable to the Indiana Office of the Attorney General upon the execution and return of this Assurance to the Attorney General's Office.

11. Respondent agrees that private individuals retain all rights to any private cause of action they may have.

12. This Assurance does not constitute an approval by the Attorney General of any of Respondent's past or future business practices, and Respondent shall not make any representations to the contrary.

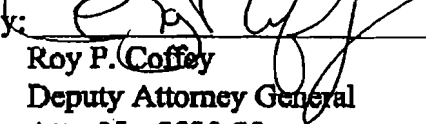


the resolution of any future written complaints the Consumer Protection Division receives.

14. The Office of the Attorney General shall file this Assurance with the Circuit Court of Lake County.

STATE OF INDIANA

JEFFREY A. MODISSETT
Attorney General of Indiana

By: 
Roy P. Coffey
Deputy Attorney General
Atty. No. 3930-29
Office of Attorney General
402 W. Washington, 5th Floor
Hammond, Indiana 46204
Telephone: (317) 232-6229

RESPONDENT

**DONALD SHEAKS, individually and doing
business as SHEAKS ROOFING**

By: 
Donald Sheaks

DATED: 11/3/99

DATED: 10-30-99

APPROVED AND ORDERED, this 31st day of March, 2000
1999.


Judge James A. Quast
Judge, Lake County Circuit Court

RPC:mgt/ss2/27016



SHEAKS ROOFING**HIGHLAND 972-2255****HAMMOND 844-2193**

670. 1203

Date 8-29 20 07TO CAROL KANIEWSKIPhone _____
Work _____

Dear Sir:

WE propose to furnish all materials and perform all labor necessary to complete the following:

TEAR OFF & Haul away ALL EXISTING
Roofing House & BACK PORCH
INSTALL ICE & WATER SHIELD AT ROOF
Edges 15 pounds shingles that
CERTAINTEAD SHINGLES
25 year shingle warranty
Aluminum Roof UNITS
SOIL STALKS

Payment \$1400.00

All of the above work to be completed in a substantial and workmanlike manner according to stand-
 ard practices for the sum of THIRTY TWO HUNDRED Dollars (\$ 3280.00)
THIRTY

UPON COMPLETION, UNLESS OTHERWISE STATED:

Any alteration or deviation from the above specifications involving extra cost of material or labor will
 only be executed upon written orders for same, and will become an extra charge over the sum men-
 tioned in this contract. All agreements must be made in writing.

Respectfully submitted,

By DOMINIC SHEAKS**ACCEPTANCE**

You are hereby authorized to furnish all material and labor required to complete the work men-
 tioned in the above proposal, for which _____ agree to pay the amount mentioned in
 said proposal, and according to the terms thereof.

ACCEPTED

Date _____, 20 _____

